

EXHIBIT D

to Stock Purchase Agreement

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
XO COMMUNICATIONS, INC.

Pursuant to Sections [103 and 303] [242 and 245]
of the
Delaware General Corporation Law

XO COMMUNICATIONS, INC., a Delaware corporation, hereby certifies as follows:

The original Certificate of Incorporation of NM Acquisition Corp. (the "Corporation") was filed with the Secretary of State of the State of Delaware on December 30, 1999 (the "Original Certificate of Incorporation").

The Original Certificate of Incorporation was amended and restated pursuant to an Amended and Restated Certificate of Incorporation, which was filed with the Secretary of State of the State of Delaware on June 8, 2000 (the "First Amended and Restated Certificate of Incorporation").

The First Amended and Restated Certificate of Incorporation was further amended pursuant to the Certificate of Merger of NEXTLINK Communications, Inc. with and into the Corporation, pursuant to which the Corporation changed its name to "NEXTLINK Communications, Inc.," which was filed with the Secretary of State of the State of Delaware on June 16, 2000.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to the Certificate of Merger of CONCENTRIC Network Corporation with and into NEXTLINK Communications, Inc., which was filed with the Secretary of State of the State of Delaware on June 16, 2000.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to a Certificate of Correction, which was filed with the Secretary of State of the State of Delaware on July 5, 2000.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to a Certificate of Designation relating to the Corporation's Series G Cumulative Convertible Participating Preferred Stock, par value \$.01 per share, and a Certificate of Designation relating to the Corporation's Series H Convertible Participating Preferred Stock, par value \$.01 per share, which were filed with the Secretary of State of the State of Delaware on July 5, 2000.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to a Certificate of Amendment, pursuant to which the Corporation changed

its name to "XO Communications, Inc.," which was filed with the Secretary of State of the State of Delaware on October 20, 2000 to be effective as of October 25, 2000.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to a Certificate of Amendment, which was filed with the Secretary of State of the State of Delaware on June 5, 2001.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to the Certificate of Merger of Internex Information Services, Inc., Delta Internet Services, Inc. and Anaserve, Inc. with and into the Corporation, which was filed with the Secretary of State of the State of Delaware on June 25, 2001 to be effective as of June 30, 2001.

The First Amended and Restated Certificate of Incorporation, as amended, was further amended pursuant to the Certificate of Merger of XO Technology Services, Inc. with and into the Corporation, which was filed with the Secretary of State of the State of Delaware on June 25, 2001 to be effective as of June 30, 2001 (the First Amended and Restated Certificate of Incorporation, as so amended to date, the "Current Certificate of Incorporation").

The Current Certificate of Incorporation is hereby amended and restated pursuant to [the order of the United States Bankruptcy Court, [District] in [(*In re XO Communications, Inc.*, No. [] (____))], and the Plan of Reorganization confirmed therein in connection with the reorganization of the Corporation under Title 11 of the United States Code and in accordance with Sections 103 and 303 of the Delaware General Corporation Law.] [Section 242 and Section 245 of the Delaware General Corporation Law and has been duly proposed and adopted by the board of directors of the Corporation and the stockholders of the Corporation, and all specifically affected classes or series of stockholders, in accordance with Sections 242 and Section 245 of the Delaware General Corporation Law. [INSERT DESCRIPTION OF OUT OF COURT TRANSACTION HERE]]

This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Current Certificate of Incorporation. The text of the Current Certificate of Incorporation is hereby amended and restated in its entirety as follows:

1. Name. The name of the corporation is:

XO COMMUNICATIONS, INC.

XO Communications, Inc. is referred to as the "Corporation" hereafter in this Amended and Restated Certificate of Incorporation.

2. Purpose. The nature of the business or purpose to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

3. Shares.

(a) The Corporation shall have authority to issue _____ (_____) shares of common stock of the Corporation, which shall be divided into three classes, _____ (_____) shares of Class A Common Stock, par value \$0.01 per share (the "Class A Common Stock"), _____ (_____) shares of Class C Common Stock, par value \$0.01 per share (the "Class C Common Stock"), and two (2) shares of Class D Common Stock, par value \$0.01 per share (the "Class D Common Stock" and together with the Class A Common Stock and the Class C Common Stock, the "Common Stock"). The Corporation shall have authority to issue _____ (_____) shares of preferred stock, par value \$0.01 per share (the "Preferred Stock").

(b) Shares of Preferred Stock of the Corporation may be issued from time to time in one or more classes or series, each of which class or series shall have such distinctive designation or title as shall be fixed by the Board of Directors and recorded in a Certificate of Designation adopted and filed as required by Section 151 of the General Corporation Law of Delaware prior to the issuance of any shares thereof. Each such class or series of Preferred Stock shall have such voting powers, full or limited, or no voting powers, and such preferences and relative participating, option or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated in such resolution or resolutions providing for the issue of such class or series of Preferred Stock as may be adopted from time to time by the Board of Directors prior to the issuance of any shares thereof pursuant to the authority hereby expressly vested in it, all in accordance with the laws of the State of Delaware.

(c) Except with regard to the special voting power and conversion rights provided in this paragraph 3, the Class A Common Stock, the Class C Common Stock and the Class D Common Stock shall carry identical characteristics, rights, preferences and limitations, including but not limited to participating equally in any dividends when and as declared by the board of directors of the Corporation (the "Board of Directors") out of funds lawfully available therefor and in any distribution resulting from a liquidation or distribution of assets, whether voluntary or involuntary, in each case subject to any preferential rights granted to any series of Preferred Stock that may be then outstanding.

(d) Holders of all classes of the Common Stock are entitled to vote on all matters that come before the stockholders, including without limitation, election of the directors to the Board of Directors. Subject to the differential voting rights provided in this paragraph 3, holders of the Common Stock shall vote together as a single class on all matters on which holders of the Common Stock are entitled to vote. Each share of the Common Stock shall have one (1) vote on all matters on which holders of the Common Stock are entitled to vote.

(e) Each share of the Class C Common Stock may be converted, at any time and from time to time at the option of the holder, into one share of the Class A Common Stock. Such conversion shall be effected by the surrender of the certificate representing the shares of Class C Common Stock to be converted at the office of the Secretary of the Corporation (or at such additional place or places as may from time to time be designated by the Secretary or any Assistant Secretary of the Corporation) in such form and accompanied by all stock transfer tax stamps, if any, as shall be required for such transfer. Upon such surrender, the holder of such

shares of Class C Common Stock shall be entitled to become, and shall be registered in the stock transfer records maintained by or on behalf of the Corporation as, the holder of the number of shares of the Class A Common Stock into which such shares of Class C Common Stock are convertible, and thereupon there shall be issued and promptly delivered to such holder, at the address of such holder provided to the Corporation at the time of surrender of the certificate or certificates representing the shares of Class C Common Stock so surrendered, a certificate or certificates for such number of shares of the Class A Common Stock into which such shares of Class C Common Stock are convertible.

(f) Each share of Class C Common Stock shall automatically be converted, without any further action on behalf of the Corporation, into one share of Class A Common Stock upon the Transfer (or presentment to the Corporation for Transfer in the stock transfer records maintained by or on behalf of the Corporation) of such share of the Class C Common Stock by a Class C Permitted Transferee to a Class C Prohibited Transferee. Such conversion shall be effective automatically upon the Transfer of title to such share of Class C Common Stock from the Class C Permitted Transferee to the Class C Prohibited Transferee, which Transfer of title shall be deemed to occur no later than the presentment of the certificate representing such share of Class C Common Stock to the Corporation for Transfer in the stock transfer records maintained by or on behalf of the Corporation. In addition, each share of the Class C Common Stock shall automatically be converted, without any further action on behalf of the Corporation, into one share of the Class A Common Stock upon any of the following events, which conversion shall be deemed effective immediately upon the occurrence of such event: (i) at such time as Class C Permitted Transferees shall own in the aggregate less than 10% of the total number of outstanding shares of the Common Stock or (ii) the fourth anniversary of the date of the original issuance of the first share or shares of the Class C Common Stock (the "Original Class C Issuance Date"). Promptly upon the conversion of all shares of Class C Common Stock into shares of Class A Common Stock pursuant to the preceding sentence, the Secretary of the Corporation (or such other employee of the Corporation as may be designated by the Secretary or any Assistant Secretary of the Corporation) shall send a notice of such conversion to each holder of shares of Class C Common Stock at the address of such holder as set forth in the stock transfer records maintained by or on behalf of the Corporation. Such notice shall state that all shares of Class C Common Stock have automatically been converted into shares of Class A Common Stock and that such holder shall have the right to surrender the certificate or certificates representing shares of Class C Common Stock held by such holder at the office of the Secretary of the Corporation (or at such additional place or places as may be designated by the Secretary or any Assistant Secretary of the Corporation) in such form and accompanied by all stock transfer tax stamps, if any, as shall be required for such transfer. Upon such surrender, such holder shall be entitled to be registered in the stock transfer records maintained by or on behalf of the Corporation as the holder of the number of shares of the Class A Common Stock into which such shares of Class C Common Stock are convertible, and thereupon there shall be issued and promptly delivered to such holder at the address of such holder set forth above, a certificate or certificates representing such number of shares of the Class A Common Stock into which such shares of Class C Common Stock are convertible.

(g) Each share of the Class D Common Stock may be converted, at any time and from time to time at the option of the holder, into one share of the Class A Common Stock. Such

conversion shall be effected by the surrender of the certificate or certificates representing the shares of Class D Common Stock to be converted at the office of the Secretary of the Corporation (or at such additional place or places as may be designated by the Secretary or any Assistant Secretary of the Corporation) in such form and accompanied by all stock transfer tax stamps, if any, as shall be required for such transfer. Upon such surrender, the holder of such shares of Class D Common Stock shall be entitled to become, and shall be registered in the stock transfer records maintained by or on behalf of the Corporation as, the holder of the number of shares of the Class A Common Stock into which such shares of Class D Common Stock are convertible, and thereupon there shall be issued and promptly delivered to such holder, at the address of such holder provided to the Corporation at the time of surrender of the certificate or certificates representing the shares of Class D Common Stock so surrendered, a certificate or certificates representing such number of shares of Class A Common Stock into which such Class D Common Stock is convertible.

(h) Each share of Class D Common Stock will automatically be converted, without any further action on behalf of the Corporation, into one share of the Class A Common Stock simultaneously upon the conversion of all outstanding shares of the Class C Common Stock into the Class A Common Stock in accordance with the terms of subparagraph 3(f), which conversion shall be deemed effective immediately upon the occurrence of such event. Promptly upon the conversion of all shares of Class D Common Stock into shares of Class A Common Stock pursuant to this subparagraph (h), the Secretary of the Corporation (or such other employee of the Corporation as may be designated by the Secretary or any Assistant Secretary of the Corporation) shall send a notice of such conversion to each holder of shares of Class D Common Stock at the address of such holder as set forth in the stock transfer records maintained by or on behalf of the Corporation. Such notice shall state that all shares of Class D Common Stock have automatically been converted into shares of Class A Common Stock and that such holder shall have the right to surrender the certificate or certificates representing the shares of Class D Common Stock held by such holder at the office of the Secretary of the Corporation (or at such additional place or places as may be designated by the Secretary or any Assistant Secretary of the Corporation) in such form and accompanied by all stock transfer tax stamps, if any, as shall be required for such transfer. Upon such surrender, such holder shall be entitled to be registered in the stock transfer records maintained by or on behalf of the Corporation as the holder of the number of shares of the Class A Common Stock into which such shares of Class D Common Stock are convertible, and thereupon there shall be issued and promptly delivered to such holder at the address of such holder as set forth in such stock transfer records a certificate or certificates for such number of shares of the Class A Common Stock into which shares of Class D Common Stock are convertible.

(i) At any time at which any shares of the Class C Common Stock or the Class D Common Stock shall remain outstanding, the affirmative vote of the holders of a majority of the outstanding shares of the Class C Common Stock and the holders of a majority of the outstanding shares of the Class D Common Stock, each voting as a separate class, shall be required before the Corporation may enter into any agreement with respect to a Major Event. A "Major Event" shall mean any merger (other than a merger of a wholly-owned Subsidiary of the Corporation with and into the Corporation), consolidation, reorganization or recapitalization of

the Corporation or any sale of all or a substantial portion of the assets of the Corporation and its subsidiaries, taken as a whole.

(j) If the Corporation in any manner subdivides the outstanding shares of one class of Common Stock into a greater number of shares of such class, the shares of all other classes of Common Stock shall be similarly subdivided, and if the Corporation in any manner combines the outstanding shares of one class of Common Stock into a lesser number of shares of such class, the shares of all other classes of Common Stock shall be similarly combined. Upon any such subdivision or combination, the Corporation shall give notice thereof to each holder of Common Stock at the address of such holder as set forth in the stock transfer records maintained by or on behalf of the Corporation.

(k) The Corporation shall not be required to issue or deliver fractional shares of any Common Stock to any holder of Common Stock upon any conversion of Common Stock provided for in this paragraph 3. If more than one share of Common Stock shall be held at the same time by the same holder, the Corporation may aggregate the number of shares of Common Stock that would be issuable upon any such conversion. If there are fractional shares of any Common Stock to be issued to any holder, the Corporation shall, if such fractional shares are not issued to such holder, pay cash in respect of such fractional shares in an amount equal to the Fair Market Value thereof (without interest).

(l) If, at any time following the Original Class C Issuance Date but prior to the Board Representation Date, shares of Class C Common Stock are outstanding, the affirmative vote of a majority of the outstanding shares of the Class C Common Stock, voting as a separate class, shall be required before the Corporation or any Subsidiary of the Corporation may:

- (i) acquire, by purchase, merger or otherwise, in one transaction or a series of related transactions, any equity or other ownership interest in, or assets of, any Person in exchange for consideration with a Fair Market Value greater than 20% of the consolidated Net Assets of the Corporation determined in accordance with GAAP;
- (ii) authorize for issuance or issue any equity securities or Equity Derivative Securities in one transaction or a series of related transactions with a Fair Market Value at the time of issuance in excess of \$100 million (excluding any Permitted Benefit Plan Issuance);
- (iii) incur Indebtedness in one transaction or a series of related transactions in excess of \$100 million in aggregate principal amount (other than intercompany Indebtedness and Indebtedness outstanding as of the Original Class C Issuance Date (and borrowings pursuant to the terms thereof), and any amendment or refinancing of such Indebtedness in a principal amount not exceeding the principal amount so refinanced and on financial and

other terms no less favorable to the Corporation than such outstanding Indebtedness);

(iv) amend this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation (the "Bylaws");

(v) issue or agree to issue any Preferred Stock.

[(m) The Corporation shall not create, designate, authorize or cause to be issued any class or series of nonvoting stock. For purposes of this paragraph 3(m), any class or series of stock that has only such voting rights as are mandated by the Delaware General Corporation Law shall be deemed to be nonvoting subject to the restrictions of this subparagraph 3(m).]
[(used if bankruptcy case filed)]

4. Bylaws. In furtherance and not in limitation of the powers conferred by statute, except as otherwise provided herein (including as provided in paragraph 3(l)(iv)), the Bylaws may be made, altered, amended or repealed by the stockholders or by a majority of the entire Board of Directors.

5. Registered Agent and Office. The name of the initial registered agent of the Corporation and the address of its initial registered office are as follows:

| <u>Name</u> | <u>Address</u> |
|-----------------------------|--|
| Corporation Service Company | 1013 Centre Road Wilmington, DE 19805 |

8. Directors.

(a) The number of directors of the Corporation shall be determined in the manner specified by the Bylaws and may be increased or decreased from time to time in the manner provided therein.

(b) There is hereby established a five member committee (the "Executive Committee") consisting of, prior to the Board Representation Date, three Forstmann Little Designees so long as Forstmann Little Beneficially Owns shares of Common Stock representing 15% or more of the outstanding shares of Common Stock or two Forstmann Little Designees so long as Forstmann Little Beneficially Owns shares of Common Stock representing at least 10% of the outstanding shares of Common Stock but less than 15% of the outstanding shares of Common Stock, and, prior to the Board Representation Date, one Telmex Independent Designee (to the extent a Telmex Independent Designee has been designated pursuant to Section 2.2(a) of the Stockholders Agreement) so long as Telmex Beneficially Owns shares of Common Stock representing at least 10% of the outstanding shares of Common Stock. After the Board Representation Date, the Executive Committee shall include two Director designees of each Investor so long as such Investor Beneficially Owns shares of Common Stock representing 15% or more of the outstanding shares of Common Stock or one Director designee of each Investor so long as such Investor Beneficially Owns shares of Common Stock representing at least 10% of

the outstanding shares of Common Stock but less than 15% of the outstanding shares of Common Stock. The Chief Executive Officer of the Corporation shall be a member of the Executive Committee. The Board of Directors shall appoint the Executive Committee annually on a basis consistent with the foregoing. The initial Executive Committee shall consist of the Chief Executive Officer of the Corporation, three Forstmann Little Designees and one Telmex Independent Designee. The Executive Committee, together with the Board of Directors, shall, pursuant to Section 141(a) of the Delaware General Corporation Law (the "DGCL"), exercise the powers and duties conferred and imposed upon the Board of Directors by the DGCL as provided for herein.

The Corporation shall not, directly or indirectly, and shall not permit any of its Subsidiaries to, directly or indirectly, take any of the following actions (except to the extent any such action is specifically authorized under the Stockholders Agreement (to the extent it is in effect), the Stock Purchase Agreement or the Registration Rights Agreement) without the approval of (x) prior to the Board Representation Date, at least three-fifths of the members of the Executive Committee, or (y) at and after the Board Representation Date, at least two-thirds of the members of the Executive Committee:

- (i) adopt a new Business Plan, materially modify the Business Plan or take any action that would constitute a material deviation from the Business Plan;
- (ii) approve or recommend a Major Event;
- (iii) acquire, by purchase, merger or otherwise, in one transaction or a series of related transactions, any equity or other ownership interest in, or assets of, any Person in exchange for consideration with a Fair Market Value greater than \$100 million;
- (iv) authorize for issuance or issue any equity securities or Equity Derivative Securities in one transaction or a series of related transactions with a Fair Market Value at the time of issuance in excess of \$100 million (excluding any Permitted Benefit Plan Issuance);
- (v) purchase, redeem, prepay, acquire or retire for value any shares of its capital stock or securities exercisable for or convertible into shares of its capital stock other than as required by the terms of such capital stock or securities;
- (vi) declare, incur any liability to declare, or pay any dividends, or make any distributions in respect of, any shares of its capital stock other than as required under the terms of such capital stock;
- (vii) redeem, retire, defease, offer to purchase or change any material term, condition or covenant in respect of outstanding long-term Indebtedness other than as required under the terms of such Indebtedness;
- (viii) incur Indebtedness in one transaction or a series of related transactions in excess of \$100 million in aggregate principal amount (other than intercompany Indebtedness and Indebtedness outstanding as of the Closing Date (and borrowing pursuant to the terms thereof), and any amendment or refinancing of such Indebtedness in a principal amount not exceeding the

principal amount so refinanced and on financial and other terms no less favorable to the Company than such outstanding Indebtedness);

(ix) make any material change in its accounting principles or practices (other than as required by GAAP or recommended by the Corporation's outside auditors), or remove the Corporation's outside auditors or appoint new auditors; or

(x) appoint, or terminate or modify the terms of the employment of, any member of the Corporation's senior management as set forth on Annex E to the Stockholders Agreement, and any of their successors or replacements, and any other persons of a similar level of authority and responsibility in the organizational structure who are appointed after the Closing Date.

Notwithstanding the foregoing, if any of the matters referred to in this paragraph 8(b) are proposed to but not approved by the requisite three-fifths majority (or, at and after the Board Representation Date, the requisite two-thirds majority) of the Executive Committee, then the Investor Designees on the Executive Committee shall attempt in good faith to resolve any objections any such Investor Designee may have to the proposal and, if the Investor Designees on the Executive Committee are unable to resolve in good faith the disagreement within 30 days after the Executive Committee meeting at which the matter was not approved, any member of the Executive Committee shall be entitled to present such issue to the Board of Directors where the issue may be adopted or rejected by a majority vote of the Board of Directors.

The Executive Committee shall have such other powers and perform such other duties as may from time to time be assigned to it by the Board of Directors.

(c) Except as otherwise expressly provided herein, the Corporation shall be managed by and under the direction of the Board of Directors. During such time as Forstmann Little Beneficially Owns shares of Common Stock representing at least 10% of the outstanding shares of Common Stock, the Board of Directors may not take any action unless a quorum consisting of at least one Forstmann Little Designee is present and during such time as Telmex Beneficially Owns shares of Common Stock representing at least 10% of the outstanding shares of Common Stock, the Board of Directors may not take any action unless a quorum consisting of at least one Telmex Designee (which, prior to the Board Representation Date, shall be a Telmex Independent Designee, to the extent a Telmex Independent Designee has been designated pursuant to Section 2.2(a) of the Stockholders Agreement) is present. So long as (i) an Investor Beneficially Owns shares of Class A Common Stock representing at least 20% of the outstanding shares of Common Stock and (ii) no Major Event or Acquisition has occurred, the approval of at least one Director nominated or appointed by such Investor pursuant to the Stockholders Agreement shall be required before the Corporation may take any of the following actions:

(i) amend, alter or repeal the Certificate of Incorporation or Bylaws, or any part thereof, or amend, alter or repeal any constituent instruments of any Corporation Subsidiary, or any part thereof;

(ii) enter into any transaction with any Affiliate (other than a wholly owned Subsidiary of the Corporation), officer, director or stockholder of the Corporation, except for

compensation and benefits paid to Directors and Officers in the ordinary course of business and other than those entered into concurrently with or prior to the Closing Date;

(iii) file any voluntary petition for bankruptcy or for receivership (including a voluntary petition for the liquidation, dissolution or winding up of the Corporation or any of its Subsidiaries other than a liquidation of a Subsidiary in which all the assets of the liquidating Subsidiary are distributed to the Corporation or another Subsidiary of the Corporation) or make any assignment for the benefit of creditors;

(iv) adopt any stockholder rights plan or other anti-takeover provisions in any document or instrument; or

(v) issue or agree to issue any Preferred Stock of the Company.

9. Indemnification.

(a) The Corporation shall indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of or in any other capacity with another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Expenses incurred in defending a civil or criminal action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Corporation) or may (in the case of any action, suit or proceeding against an officer, trustee, employee or agent) be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors upon receipt of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this paragraph 9.

(c) The indemnification and other rights set forth in this paragraph 9 shall not be exclusive of any provisions with respect thereto in the Bylaws or any other contract or

agreement between the Corporation and any officer, director, employee or agent of the Corporation.

(d) Neither the amendment nor repeal of this paragraph 9, subparagraph (a), (b) or (c), nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this paragraph 9, subparagraph (a), (b) or (c), shall eliminate or reduce the effect of this paragraph 9, subparagraphs (a), (b) and (c), in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this paragraph 9, subparagraph (a), (b) or (c), if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

10. Limitation of Director Liability. A director shall have no liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for any breach of the director's duty of loyalty to the Corporation or its stockholders, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law by the director, conduct violating Section 174 of the General Corporation Law of Delaware, or for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled. If the General Corporation Law of Delaware is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the full extent permitted by the General Corporation Law of Delaware, as so amended. Any repeal or modification of this paragraph 10 shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification for or with respect to an act or omission of such director occurring prior to such repeal or modification. All references in this paragraph to a director shall also be deemed to refer to any person who, pursuant to the provisions of this Certificate of Incorporation, in accordance with Section 141(a) of the DGCL, exercises or performs any of the powers or duties otherwise conferred or imposed upon the Board of Directors by the DGCL.

11. Business Combinations with Interested Stockholders. The Corporation hereby elects not to be governed by Section 203 of the Delaware General Corporation Law.

12. Definitions. Any document referred to herein shall be provided to any stockholder upon request without charge. For purposes of this Certificate of Incorporation, the following capitalized terms shall have the following meanings:

"Acquisition" shall mean the acquisition by any "person" or any "group" (as such terms are used for purposes of Rules 13d-1 and 13d-5 under the Exchange Act) of more than 50% of the total number of outstanding shares of Common Stock.

"Affiliate" shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" having meanings correlative to the foregoing.

"Beneficial Ownership" shall have the meaning ascribed to such term in Rules 13d-3 and 13d-5 under the Exchange Act, except that, solely for the purpose of determining "Beneficial Ownership," (i) a Person shall be deemed to have "Beneficial Ownership" of all shares of Common Stock that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time, and (ii) "Beneficial Ownership" shall be determined without regard to any disclaimer of beneficial ownership and without regard to the fact that one or more classes of the Common Stock is not registered under the Exchange Act; provided, however, that an Investor shall be deemed to Beneficially Own shares of Class A Common Stock only at such time, and to the extent, that it has record ownership of shares of Class A Common Stock and shall not be deemed to Beneficially Own shares of Class A Common Stock by virtue of its ownership of shares of Class C Common Stock or Class D Common Stock or any other option, warrant or security exercisable for or convertible into shares of Class A Common Stock. Correlative meanings shall also be ascribed to the terms "Beneficially Own" and "Beneficial Owner".

"Board Representation Date" means the earlier of (i) the first date on which the Board of Directors has received written notice from Telmex that Telmex desires to designate Directors to the Board pursuant to the Stockholders Agreement, and Telmex has determined in good faith, after consultation with its legal counsel, which counsel shall be an outside law firm of national reputation, that one or more directors, officers or employees of Telmex or a Subsidiary of Telmex can become Directors without violating Section 8 of the Clayton Antitrust Act of 1914, as amended, and (ii) the first date upon which any director, officer or employee of Telmex or a Subsidiary of Telmex is elected or appointed as a Director.

"Business Plan" shall mean the business plan of the Corporation, as approved by each of the Investors prior to the Closing Date, and as the same may be amended from time to time in accordance with the Stockholders Agreement.

"Capital Lease" means a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

"Class C Permitted Transferee" means Telmex or one of its Subsidiaries.

"Class C Prohibited Transferee" means any Person other than a Class C Permitted Transferee.

"Closing Date" shall mean the date on which the closing under the Stock Purchase Agreement occurs.

"Encumbrance" means, with respect to any Person, any mortgage, lien, pledge, charge, claim, option, proxy, voting trust, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

"Equity Derivative Securities" means any and all equity and debt securities (or any hybrid or combination thereof) convertible into or exchangeable or exercisable for, or which otherwise give the holder thereof the right to acquire, any equity securities of the Corporation.

"Exchange Act" shall mean the United States Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

"Fair Market Value" means (i) in the case of cash, the amount thereof, (ii) in the case of capital stock that has been publicly traded for a period of at least 12 months, the Market Value thereof, and (iii) in the case of other assets or securities, the fair market value thereof as determined in good faith by the Board of Directors (which determination shall be conclusive and binding on all stockholders).

"Forstmann Little" shall mean, collectively, Forstmann Little & Co. Equity Partnership-VII, L.P. and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P.

"Forstmann Little Designee" or "Forstmann Little Designees" shall mean a Director, or the Directors, nominated or appointed by Forstmann Little pursuant to the Stockholders Agreement (other than Telmex Independent Designees).

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), that are applicable to the circumstances as of the date of determination.

"Guaranty" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing (whether by reason of being a general partner of a partnership or otherwise) any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person: (a) to purchase such indebtedness or obligation or any property constituting security therefor; (b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation; (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or (d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof. In any computation of the Indebtedness or other liabilities of the obligor under any Guaranty, the Indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

"Indebtedness" means, with respect to any Person, at any time, without duplication, (a) its liabilities for borrowed money; (b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property); (c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases; (d) all liabilities for borrowed money secured by any Encumbrance with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities); (e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money); (f) Swaps of such Person; and (g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

"Investor Designees" shall mean the Forstmann Little Designees and Telmex Designees.

"Market Value" means, as of any date of determination, (i) with respect to shares of any class or series of capital stock traded (1) on the New York Stock Exchange (the "**NYSE**") or another national stock exchange or quoted on The National Market System of the Nasdaq Stock Market ("**Nasdaq NMS**"), the average of the reported closing bid and asked prices regular way of a share of such class or series for the 30 trading days immediately preceding such date of determination (the "**Relevant Trading Period**"), as reported, (x) in the case of the NYSE, on the NYSE composite tape, and (y) in the case of any other national securities exchange or Nasdaq NMS, publicly by such exchange or Nasdaq NMS, or (2) solely or primarily in the over-the-counter market, the average of the bid and asked prices of a share of such class or series in the over-the-counter market during the Relevant Trading Period as furnished by any NYSE member firm selected from time to time by the Corporation or (ii) with respect to any class or series of capital stock not traded or quoted on the NYSE, any other national stock exchange or Nasdaq NMS or in the over-the-counter market, the fair market value of a share of such class or series as determined in good faith by the Board of Directors (which determination shall be conclusive and binding on all stockholders).

"Net Assets" means, with respect to any Person, the total assets of such Person minus the total liabilities of such Person, each as reflected on the balance sheet of such Person for the most recently-ended fiscal quarter.

"Permitted Benefit Plan Issuance" means any issuance of equity securities or Equity Derivative Securities to directors, officers, employees in the ordinary course of business pursuant to an employee stock purchase plan, employee stock option plan or other similar compensation plan approved by the compensation committee of the Board of Directors or the Board of Directors.

"Person" means any individual, corporation, limited liability company, partnership, trust or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Preferred Stock" shall have the meaning set forth in paragraph 3(a) herein.

"Registration Rights Agreement" shall mean the Registration Rights Agreement dated as of _____, 2002 among the Investors and the Corporation.

"Stockholders Agreement" shall mean the Stockholders Agreement, dated as of _____, 2002, and as amended from time to time, by and among Forstmann Little, [Telmex] (Telmex and Forstmann Little sometimes being herein collectively referred to as the "Investors" and individually as an "Investor"), and the Corporation.

"Stock Purchase Agreement" shall mean the Stock Purchase Agreement, dated January 15, 2002, by and among each of the Investors and the Corporation.

"Swaps" means, with respect to any Person, payment obligations with respect to interest rate swaps, currency swaps and similar obligations obligating such Person to make payments, whether periodically or upon the happening of a contingency.

"Subsidiary" means, with respect to any Person, (i) a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (ii) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof. Unless the context otherwise requires, any reference to a Subsidiary is to a Subsidiary of the Corporation.

"Telmex" means Teléfonos de México, S.A. de C.V.

"Telmex Designee" or "Telmex Designees" shall mean a Director, or the Directors, appointed or nominated by Telmex pursuant to the Stockholders Agreement (including the Telmex Independent Designees).

"Telmex Independent Designees" means those individuals nominated by Telmex in accordance with the Stockholders Agreement, who are independent of, and not affiliated with, either Telmex or the Corporation.

"Transfer" means, directly or indirectly, the sale, assignment, conveyance, transfer or other disposition of, or pledge or other encumbrance of, a security or interest, whether resulting from a contractual obligation of the holder, by operation of law, by gift or for any other reason.

IN WITNESS WHEREOF, said Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its Senior Vice President and Secretary this ___th day of _____, 2002.

(436036.8)

Gary D. Begeman
Senior Vice President and Secretary

EXHIBIT E

to Stock Purchase Agreement

RESTATED
BYLAWS
OF
XO COMMUNICATIONS, INC.

These Bylaws are intended to conform to the mandatory requirements of the General Corporation Law of Delaware (the "Act"). Any ambiguity arising between these Bylaws and the discretionary provisions of the Act shall be resolved in favor of the application of the Act.

ARTICLE I.
STOCKHOLDERS

Section 1. Place.

Stockholders meetings shall be held at the registered office of the Corporation unless a different place shall be designated by the Board of Directors.

Section 2. Annual Meeting.

The annual meeting of the Stockholders shall be held on the date and time designated by the Board of Directors. The meeting shall be held for the purpose of electing Directors and for the transaction of such other business as may come before the meeting, whether stated in the notice of meeting or not, except as otherwise expressly stated in the Certificate of Incorporation. If the election of Directors shall not be held on the day designated herein, the Board of Directors shall cause the election to be held at a special meeting of the Stockholders on the next convenient day.

Section 3. Special Meetings.

Special meetings of the Stockholders may be called by the President or the Board of Directors for any purpose at any time, and shall be called by the President at the request of the holders of shares entitled to cast at least 25% of votes eligible to be cast. Special meetings shall be held at such place or places within or without the state of Delaware as shall be designated by the Board of Directors and stated in the notice of such meeting. At a special meeting no business shall be transacted and no corporate action shall be taken other than that stated in the notice of the meeting.

Section 4. Notice.

Written or printed notice stating the place, hour and day of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the officer or persons calling the meeting to each Stockholder of record entitled to vote at such meeting, or for such other notice period as may be required by the Act. Such notice and the effective date thereof

shall be determined as provided in the Act.

Section 5. Quorum.

A majority of votes entitled to be cast by the shares issued, outstanding and entitled to vote upon the subject matter at the time of the meeting, represented in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the Stockholders, unless the representation of a larger number of shares shall be required by law, by the Certificate of Incorporation or by these Bylaws, in which case the representation of the number of shares so required shall constitute a quorum; provided that at any meeting of the Stockholders at which the holders of any class of stock of the Corporation shall be entitled to vote separately as a class, the holders of a majority in number of the total outstanding shares of such class, present in person or by proxy, shall constitute a quorum for purposes of such class vote unless the representation of a larger number of shares of such class shall be required by law, the Certificate of Incorporation or by these Bylaws.

Section 6. Adjourned Meetings.

If there is no quorum present at any annual or special meeting the Stockholders present may adjourn to such time and place as may be decided upon by the holders of the majority of the shares present, in person or by proxy; provided, that if the holders of any class of stock of the Corporation are entitled to vote separately as a class upon any matter at such meeting, any adjournment of the meeting in respect of action by such class upon such matter shall be determined by the holders of a majority of the shares of such class present in person or by proxy and entitled to vote at such meeting. When a meeting is adjourned to another time or place, notice of such adjournment shall be given in accordance with Section 4 of this Article, but if a quorum is present, adjournment may be taken from day to day or to such time and place as may be decided and announced by the Stockholders holding a majority of the shares present in person or by proxy, and subject to the requirements of the Act, no notice of such adjournment need be given; provided, that, any adjournment of a meeting in respect of action by holders of any class of stock of the Corporation that are entitled to vote separately as a class upon any matter at such meeting, may be taken from day to day or to such time and place as may be decided and announced by the holders of a majority of the shares of such class present in person or by proxy and entitled to vote at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

Section 7. Voting.

Each Stockholder entitled to vote on the subject matter shall be entitled to that number of votes provided in the Certificate of Incorporation for each share of stock standing in the name of the Stockholder on the books of the Corporation at the time of the closing of the transfer books for said meeting, whether represented and present in person or by proxy. Except as otherwise provided in the Certificate of Incorporation, these Bylaws or by law, Directors shall be elected by a plurality of the votes cast at a meeting of Stockholders by the Stockholders entitled to vote in the election and, whenever any corporate action, other than the election of Directors is to be taken, it shall be authorized by the affirmative vote of the holders of a majority

of the shares of each class represented at the meeting and entitled to vote thereon. The Stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Stockholders to leave less than a quorum.

The Secretary shall prepare and make, at least ten days before every election of Directors, a complete list of the Stockholders entitled to vote, arranged in alphabetical order and showing the address of each Stockholder and the number of shares of each Stockholder. Such list shall be open at the offices of the Corporation for said ten days, to the examination of any Stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any Stockholder who may be present.

Section 8. Proxies.

At all meetings of Stockholders, a Stockholder may vote in person or by proxy executed in writing by the Stockholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 9. Record Date.

The Board of Directors is authorized to fix in advance a date not exceeding sixty days nor less than ten days preceding the date of any meeting of the Stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining the consent of Stockholders for any purposes, as a record date for the determination of the Stockholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and, in such case, such Stockholders and only such Stockholders as shall be Stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation, after such record date fixed pursuant to this Section.

Section 10. Conduct of Meetings.

The Chairman of the Board of Directors or, in his absence the Chief Executive Officer, President, or the Vice President designated by the Chairman of the Board, shall preside at all regular or special meetings of Stockholders. To the maximum extent permitted by law, such presiding person shall have the power to set procedural rules, including but not limited to rules respecting the time allotted to Stockholders to speak, governing all aspects of the conduct of such meetings.

ARTICLE II.

DIRECTORS

Section 1. In General.

The business and affairs of the Corporation shall be managed by a Board of Directors which, prior to the Board Representation Date, shall consist of twelve (12) Directors. At and after the Board Representation Date, the Board of Directors shall consist of such greater number of Directors as may be fixed from time to time by resolution of the Board of Directors, consistent with the Stockholders Agreement (to the extent it is in effect). The initial members of the Board of Directors shall be appointed in accordance with the Stockholders Agreement and shall, subject to the Stockholders Agreement (to the extent it is in effect), hold office until the first annual meeting of the Stockholders and his or her successor shall have been duly elected and qualified (or until his or her earlier death, resignation or removal). Thereafter, Directors shall be appointed or nominated in accordance with the Stockholders Agreement (to the extent it is in effect) and the term of such Directors shall begin upon each Director's election by the Stockholders as provided in Article I, Section 7 above, and shall continue until his or her successor shall have been elected and qualified (or until his or her earlier death, resignation or removal).

Section 2. Powers.

The corporate powers, business, property and interests of the Corporation shall be exercised, conducted and controlled by the Board of Directors, which shall have all power necessary to conduct, manage and control its affairs, and to make such rules and regulations as it may deem necessary as provided by the Act; to appoint and remove all officers, agents and employees; to prescribe their duties and fix their compensation; to call special meetings of Stockholders whenever it is deemed necessary by the Board, to incur indebtedness and to give securities, notes and mortgages for same, all in a manner consistent with the Certificate of Incorporation and the Stockholders Agreement (to the extent it is in effect). It shall be the duty of the Board to cause a complete record to be kept of all the minutes, acts, and proceedings of its meetings.

Section 3. Vacancies.

Subject to the terms of the Stockholders Agreement (to the extent it is in effect), upon a vacancy on the Board of Directors occurring as a result of the death, resignation or removal of any Director, the Board of Directors shall, by the affirmative vote of a majority of the remaining Directors, appoint or nominate a person to fill such vacancy. Any Director appointed (or nominated and elected) to replace another Director shall serve for the remainder of the term of the Director being replaced, subject to earlier death, resignation or removal or until his successor shall have been duly elected and qualified.

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bylaws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act

only for the purpose of (i) filling such vacancy in accordance with the terms of these Bylaws and the Stockholders Agreement (to the extent it is in effect); or (ii) preserving the assets of the Corporation.

In the event that at any time during the term of the Stockholders Agreement there exist vacancies on the Board due to the death, resignation or removal of a Forstmann Little Designee or a Telmex Designee, each of the Investors agrees to use its best efforts to designate successors to fill any such vacancies as promptly as practicable, but in no event later than the 30th day following such vacancy (the period from the first date of such vacancy until the earlier to occur of the filling of such vacancy or the 30th day thereafter, the "Vacancy Period"); *provided, however*, that if such vacancy is not filled during such 30-day period, the Investor that has the right to fill such vacancy may do so at any time following such 30-day period. During the Vacancy Period, no action (except for such Board actions as are required to fill such vacancy in accordance with the terms of the Stockholders Agreement (to the extent it is in effect)) may be taken by the Board until such vacancy is filled or this requirement is waived by the Investor that has the right to fill such vacancy.

Section 4. Annual Meeting.

There shall be an annual meeting of the Board of Directors which shall be held at such time and at such place as shall be determined by the Board of Directors.

Section 5. Special Meeting.

Special meetings may be called from time to time by the President or any one of the Directors. Any business may be transacted at any special meeting.

Section 6. Quorum.

A majority of the Directors shall constitute a quorum. As long as the Certificate of Incorporation so requires, a quorum of the Board of Directors shall include at least one Forstmann Little Designee and one Telmex Designee (which, prior to the Board Representation Date, shall be a Telmex Independent Designee, to the extent a Telmex Independent Designee has been appointed pursuant to Section 2.2(a) of the Stockholders Agreement). The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If less than a quorum is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice, other than announcement at the meeting, until a quorum shall be present. Interested Directors may be counted for quorum purposes.

Section 7. Notice and Place of Meetings.

Notice of all Directors' meetings shall be given in accordance with the Act. No notice need be given of any annual meeting of the Board of Directors. One day prior notice shall be given for all special meetings of the Board, but the purpose of special meetings need not be stated in the notice.

Meetings of the Board of Directors may be held at the principal office of the

Corporation, or at such other place as shall be stated in the notice of such meeting. Members of the Board of Directors, or any committee designated by the Board of Directors, shall, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, have the power to participate in a meeting of the Board of Directors, or any committee, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at this meeting.

Section 8. Compensation.

By resolution of the Board of Directors, each Director may either be (i) reimbursed for his reasonable out-of-pocket expenses, if any, in connection with performing his or her duties, including without limitation the reasonable out-of-pocket expenses incurred by such person attending meetings of the Board or any committee thereof or meetings of any board of Directors or other similar managing body (and any committee thereof) of any Subsidiary of the Corporation or (ii) paid a fixed fee for attending each meeting of the Board of Directors, or both. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 9. Removal or Resignation of Directors.

Any Director may resign by delivering written notice of the resignation to the Board of Directors or an officer of the Corporation. All or any number of the Directors may be removed, with or without cause, at a meeting expressly called for that purpose by a vote of the holders of the majority of the shares then entitled to vote at an election of Directors. Except as set forth in the preceding sentence, during the term of the Stockholders Agreement no Forstmann Little Designee may be removed from office except by Forstmann Little and no Telmex Designee may be removed from office except by Telmex. Forstmann Little shall have the right to remove any Forstmann Little Designee and Telmex shall have the right to remove any Telmex Designee, in each case, with or without cause, at any time.

Section 10. Presumption of Assent.

A Director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless his dissent shall be manifested in the manner required by the Act. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 11. Committees.

The Board of Directors shall annually, during the term of the Stockholders Agreement, appoint an Executive Committee in accordance with the Certificate of Incorporation. Other committees of two or more Directors, may be appointed by the Board of Directors, which committees shall hold office for such time and have such powers and perform such duties as may from time to time be assigned to them by the Board of Directors. The Board of Directors shall annually, during the term of the Stockholders Agreement, appoint an Audit and a Compensation Committee. Subject to the Stockholders Agreement (to the extent it is in effect), the federal securities laws, and the rules and regulations of the Securities and Exchange Commission and

any stock exchange or quotation system on which the Common Stock is quoted or listed, so long as an Investor Beneficially Owns shares of Common Stock representing at least 10% of the outstanding shares of Common Stock, at least one of the Director designees of such Investor (which, as to Telmex, prior to the Board Representation Date, shall be a Telmex Independent Designee, to the extent a Telmex Independent Designee has been designated pursuant to Section 2.2(a) of the Stockholders Agreement) shall be entitled to sit on each committee of the Board and the Corporation shall cause such designee to be appointed to each of the committees of the Board as may be requested at any time or from time to time by Forstmann Little or Telmex, as the case may be.

Subject to the terms of the Certificate of Incorporation and the Stockholders Agreement (to the extent it is in effect), any member of a committee may be removed at any time, with or without cause, by a resolution of a majority of the whole Board of Directors. Any vacancy in the Executive Committee may be filled, subject to the terms of the Certificate of Incorporation and the Stockholders Agreement (to the extent it is in effect), from among the Directors by a resolution of a majority of the whole Board of Directors.

ARTICLE III.

OFFICERS AND AGENTS - GENERAL PROVISIONS

Section 1. Number, Election and Term.

Officers of the Corporation shall be a Chief Executive Officer, President, Secretary, and Treasurer. Officers shall be elected by the Board of Directors at its first meeting, and at each regular annual meeting of the Board of Directors thereafter. Each officer shall hold office until the next succeeding annual meeting of the Directors and until his successor shall be elected and qualified. Any one person may hold more than one office if it is deemed advisable by the Board of Directors.

Section 2. Additional Officers and Agents.

The Board of Directors may appoint and create such other officers and agents as may be deemed advisable and prescribe their duties.

Section 3. Resignation or Removal.

Any officer or agent of the Corporation may resign from such position by delivering written notice of the resignation to the Board of Directors, but such resignation shall be without prejudice to the contract rights, if any, of the Corporation. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. Vacancies.

Vacancies in any office caused by any reason shall be filled by the Board of

Directors at any meeting by selecting a suitable and qualified person to act during the unexpired term.

Section 5. Salaries.

The salaries of all the officers, agents and other employees of the Corporation shall be fixed by the Board of Directors and may be changed from time to time by the Board, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a Director of the Corporation. All Directors, including interested Directors, are specifically authorized to participate in the voting of such compensation irrespective of their interest.

ARTICLE IV.

DUTIES OF THE OFFICERS

Section 1. Chairman of the Board.

The Chairman of the Board, if any, shall be a member of the Board of Directors and, subject to Sections 2 and 3 of this Article IV, shall preside at all meetings of the Stockholders and Directors; perform all duties required by the Bylaws of the Corporation, and as may be assigned from time to time by the Board of Directors; and shall make such reports to the Board of Directors and Stockholders as may be required.

Section 2. Chief Executive Officer.

The Chief Executive Officer, if any, shall have general charge and control of the affairs of the Corporation subject to the direction of the Board of Directors; sign as President all certificates of stock of the Corporation; perform all duties required by the Bylaws of the Corporation, and as may be assigned from time to time by the Board of Directors; and shall make such reports to the Board of Directors and Stockholders as may be required. In addition, if no Chairman of the Board is elected by the Board or if the Chairman is unavailable, the Chief Executive Officer shall perform all the duties required of such officer by these Bylaws.

Section 3. President.

The President shall, if no Chief Executive Officer shall have been appointed or if the Chief Executive Officer is unavailable, perform all of the duties of the Chief Executive Officer. If a Chief Executive Officer shall have been appointed, the President shall perform such duties as shall be assigned by the Board of Directors, and in the case of absence, death or disability of the Chief Executive Officer, shall perform and be vested with all of the duties and powers of the Chief Executive Officer, until the Chief Executive Officer shall have resumed such duties or the Chief Executive Officer's successor shall have been appointed.

Section 4. Vice President.

The Vice President, or any of them, shall perform such duties as shall be assigned by the Board of Directors, and in the case of absence, disability or death of the President, the Vice President shall perform and be vested with all the duties and powers of the President, until

the President shall have resumed such duties or the President's successor is elected. In the event there is more than one Vice President, the Board of Directors may designate one or more of the Vice Presidents as Executive Vice Presidents, who, in the event of the absence, disability or death of the President shall perform such duties as shall be assigned by the Board of Directors.

Section 5. Secretary.

The Secretary shall keep a record of the proceedings at the meetings of the Stockholders and the Board of Directors and shall give notice as required in these Bylaws of all such meetings; have custody of all the books, records and papers of the Corporation, except such as shall be in charge of the Treasurer or some other person authorized to have custody or possession thereof by the Board of Directors; sign all Certificates of Stock of the Corporation; from time to time make such reports to the officers, Board of Directors and Stockholders as may be required and shall perform such other duties as the Board of Directors may from time to time delegate. In addition, if no Treasurer is elected by the Board, the Secretary shall perform all the duties required of the office of Treasurer by the Act and these Bylaws.

Section 6. Treasurer.

Treasurer shall keep accounts of all monies of the Corporation received or disbursed; from time to time make such reports to the officers, Board of Directors and Stockholders as may be required, perform such other duties as the Board of Directors may from time to time delegate.

Section 7. Assistant Secretary.

The Assistant Secretary, if any, shall assist the Secretary in all duties of the office of Secretary. In the case of absence, disability or death of the Secretary, the Assistant Secretary shall perform and be vested with all the duties and powers of the Secretary, until the Secretary shall have resumed such duties or the Secretary's successor is elected.

Section 8. Assistant Treasurer.

The Assistant Treasurer, if any, shall assist the Treasurer in all duties of the office of Treasurer. In the case of absence, disability or death of the Treasurer, the Assistant Treasurer shall perform and be vested with all the duties and powers of the Secretary, until the Treasurer shall have resumed such duties or the Treasurer's successor is elected.

ARTICLE V.

STOCK

Section 1. Certificates.

The shares of stock of the Corporation shall be evidenced by an entry in the stock transfer records of the Corporation, and may be represented by stock certificates in a form adopted by the Board of Directors and every person who shall become a Stockholder shall be entitled, upon request, to a certificate of stock. All certificates shall be consecutively numbered

by class. Certificates, if any, shall be signed by the Chairman of the Board of Directors, the President or one of the Vice Presidents, and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, provided, however, that where such certificates are signed by a transfer agent or an assistant transfer agent or by a transfer clerk acting on behalf of the Corporation and a registrar, the signature of any such officer may be facsimile. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restriction of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the Act, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each Stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Transfer of Certificates.

Any certificates of stock transferred by endorsement shall be surrendered, canceled and new certificates issued to the purchaser or assignee.

Section 3. Transfer of Shares.

Shares of stock shall be transferred only on the books of the Corporation by the holder thereof, in person or by his attorney, and no transfers of certificates of stock shall be binding upon the Corporation unless made in accordance with the Stockholders Agreement, if applicable, and until the terms of this Section and, with respect to certificated shares, the terms of Section 2 of this Article are met to the satisfaction of the Secretary of the Corporation.

The Board of Directors may make other and further rules and regulations concerning the transfer and registration of shares of the Corporation, and may appoint a transfer agent or registrar or both and may require all certificates of stock to bear the signature of either or both.

The stock ledgers of the Corporation, containing the names and addresses of the Stockholders and the number of shares held by them respectively, shall be kept at the principal offices of the Corporation or at the offices of the transfer agent of the Corporation.

Section 4. Lost Certificates.

In the case of loss, mutilation or destruction of a certificate of stock, a duplicate certificate may be issued upon such terms as the Board of Directors shall prescribe.

Section 5. Dividends.

The Board of Directors may from time to time declare, and the Corporation may then pay, dividends on its outstanding shares in the manner and upon the terms and conditions

provided by the Act and in its Certificate of Incorporation.

Section 6. Working Capital.

Before the payment of any dividends or the making of any distributions of the net profits, the Board of Directors may set aside out of the net profits of the Corporation such sum or sums as in their discretion they think proper, as a working capital or as a reserve fund to meet contingencies. The Board of Directors may increase, diminish or vary the capital of such reserve fund in their discretion.

ARTICLE VI.

SEAL

There shall be no corporate seal.

ARTICLE VII.

WAIVER OF NOTICE

Whenever any notice is required to be given to any Stockholder or Director of the Corporation, a waiver signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII.

ACTION BY STOCKHOLDERS OR DIRECTORS WITHOUT A MEETING

Any action required to be taken at a meeting of the Stockholders of the Corporation, or any other action which may be taken at a meeting of the Stockholders, may be taken without a meeting, if a consent in writing setting forth the actions so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted with respect to the subject matter thereof. Such consent shall have the same effect and force as a vote of said Stockholders.

Any action required to be taken at a meeting of the Board of Directors of the Corporation, or any other action which may be taken at a meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if a consent in writing setting forth the actions so taken shall be signed by all of the members of the Board of Directors or committee, as the case may be. Such consent shall have the same effect and force as a unanimous vote of said Directors or committee.

ARTICLE IX.

MISCELLANEOUS

Section 1. Fiscal Year.

The fiscal year of the Corporation shall be fixed, and may be changed, by resolution of the Board of Directors.

Section 2. Notices.

Except as otherwise expressly provided, any notice required by these Bylaws to be given shall be sufficient if given as provided in the General Corporation Law of Delaware.

Section 3. Waiver of Notice.

Any Stockholder or Director may at any time, by writing or by fax, waive any notice required to be given under these Bylaws, and if any Stockholder or Director shall be present at any meeting his presence shall constitute a waiver of such notice.

Section 4. Voting Stock of Other Corporations.

Except as otherwise ordered by the Board of Directors, the Chairman of the Board, Chief Executive Officer, President, Secretary or Treasurer, or any Vice President, Assistant Secretary or Assistant Treasurer, shall have full power and authority on behalf of the Corporation to attend and to act and to vote at any meeting of the Stockholders of any corporation of which the Corporation is a stockholder and to execute a proxy to any other person to represent the Corporation at any such meeting, and at any such meeting such person shall possess and may exercise any and all rights and powers incident to ownership of such stock and which, as owner thereof, the Corporation might have possessed and exercised if present.

ARTICLE X.

AMENDMENTS AND STOCKHOLDERS AGREEMENT

Subject to the terms of the Stockholders Agreement (to the extent it is in effect), any and all of these Bylaws may be altered, amended, repealed or suspended by the affirmative vote of a majority of the Directors at any meeting of the Directors or by the Stockholders as provided in the Certificate of Incorporation. New Bylaws may be adopted in like manner.

These Bylaws shall be read subject to and in accordance with the Stockholders Agreement, until such time as the Stockholders Agreement terminates in accordance with its terms. In the event of a conflict between these Bylaws and the Stockholders Agreement (to the extent it is in effect), the Stockholders Agreement shall prevail.

ARTICLE XI.

DEFINITIONS

For purposes of these Bylaws, the following capitalized terms shall have the following meanings:

"Beneficial Ownership" shall have the meaning ascribed to such term in Rules 13d-3 and 13d-5 under the Exchange Act, except that, solely for the purpose of determining "Beneficial Ownership," (i) a Person shall be deemed to have "Beneficial Ownership" of all shares of Common Stock that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time, and (ii) "Beneficial Ownership" shall be determined without regard to any disclaimer of beneficial ownership and without regard to the fact that one or more classes of the Common Stock is not registered under the Exchange Act; *provided, however*, that an Investor shall be deemed to Beneficially Own shares of Class A Common Stock only at such time, and to the extent, that it has record ownership of shares of Class A Common Stock and shall not be deemed to Beneficially Own shares of Class A Common Stock by virtue of its ownership of shares of Class C Common Stock or Class D Common Stock or any other option, warrant or security exercisable for or convertible into shares of Class A Common Stock. Correlative meanings shall also be ascribed to the terms "Beneficially Own" and "Beneficial Owner".

"Board Representation Date" shall mean the earlier of (i) the first date on which the Board of Directors has received written notice from Telmex that Telmex desires to designate Directors to the Board pursuant to the Stockholders Agreement, and Telmex has determined in good faith, after consultation with its legal counsel, which counsel shall be an outside law firm of national reputation, that one or more directors, officers or employees of Telmex or a Subsidiary of Telmex can become Directors without violating Section 8 of the Clayton Antitrust Act of 1914, as amended, and (ii) the first date upon which any director, officer or employee of Telmex or a Subsidiary of Telmex is elected or appointed as a Director.

"Exchange Act" shall mean the United States Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

"Forstmann Little Designee" or *"Forstmann Little Designees"* shall mean a Director, or the Directors, nominated or appointed by Forstmann Little pursuant to the Stockholders Agreement (other than Telmex Independent Designees).

"Permitted Transferee" shall mean any Person to whom Restricted Securities are Transferred (as such terms are defined in the Stockholders Agreement), in accordance with the terms of the Stockholders Agreement.

"Person" shall mean any individual, corporation, limited liability company, partnership, trust or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Stockholders Agreement" shall mean the Stockholders Agreement, dated as of _____, 2002, and as amended from time to time, by and among Forstmann Little & Co. Equity

Partnership-VII, L.P., a Delaware limited partnership ("Equity VII"), Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P., a Delaware limited partnership ("MBO VIII" and collectively with Equity VII and their Permitted Transferees, "Forstmann Little"), [Telefonos de Mexico, S.A. de C.V., a *sociedad anonima de capital variable* organized under the laws of the United Mexican States] (together with its Subsidiaries and its Permitted Transferees, "Telmex" and Telmex and Forstmann Little sometimes being herein collectively referred to as the "Investors" and individually as an "Investor"), and the Corporation.

"*Subsidiary*" of any Person shall mean (i) a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (ii) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

"*Telmex Designee*" or "*Telmex Designees*" shall mean a Director, or the Directors, appointed or nominated by Telmex pursuant to the Stockholders Agreement (including the Telmex Independent Designees).

"*Telmex Independent Designees*" means those individuals nominated by Telmex in accordance with the Stockholders Agreement, who are independent of, and not affiliated with, either Telmex or the Corporation.

IDENTIFICATION

I hereby certify that I am the Secretary of XO Communications and that the foregoing Bylaws were and are the Bylaws adopted by the Directors of the Corporation at a duly constituted meeting of the Board of Directors.

[]
Secretary

(436859.10)